

**DISTRICT OF COLUMBIA
BOARD OF EDUCATION**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, Section 38-101 et seq., hereby gives notice of emergency and proposed rulemaking action taken by the Board at its meeting on April 16, 2003 to amend Chapter 22 of the Board Rules, Title 5 of the District of Columbia Municipal Regulations. The purpose of this rulemaking is to suspend the high school graduation exit exam requirement for school year 2002-2003 until the Board can adopt a rigorous, criterion-referenced examination that is consistent with the requirements of Public Law 107-110 (No Child Left Behind).

The emergency results from the need to ensure that seniors graduating in 2003 are not penalized unfairly by a graduation requirement that will be inconsistent with requirements imposed on previous and subsequent classes and to enable the Board to establish an examination that is consistent with the requirements of federal legislation.

The emergency and proposed rulemaking shall expire within 120 days of April 16, 2003, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Board also gives notice of its intent to adopt these emergency and proposed rules in not less than thirty (30) days following publication of this notice in the D.C. Register.

Chapter 22 is amended as follows:

Subsection 2202.1(b) is deleted in its entirety:

~~Beginning in school year 2002-2003, achievement of the "basic" level or higher in reading and mathematics on the eleventh grade (Stanford 9) exam or passage of the District Second Level Proficiency Exam (DSLPE)~~

Subsection 2202.1(c) is renumbered as 2202.1 (b).

Written comments on the emergency and proposed rulemaking are invited from interested citizens. Such comments should be addressed to Mr. Russell Smith, Executive Secretary, D.C. Board of Education, 825 North Capitol Street, N.E., Suite

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Human Services ("DHS"), pursuant to the authority set forth in Section 2 of the Interim Disability Assistance Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-252; D.C. Official Code § 4-204.07) as amended by Section 2(b) of the Interim Disability Assistance Emergency Amendment Act of 2003 ("2003 Act"), effective January 22, 2003 (D.C. Act 15-2; 50 DCR 1424) and Mayor's Order 2002-152, dated August 29, 2002 hereby gives notice of intent to adopt on an emergency basis the following new Chapter 66 of Title 29 of the District of Columbia Municipal Regulations entitled "Interim Disability Assistance." The purpose of the rules is to establish guidelines for the Interim Disability Assistance (IDA) program that provides interim assistance to applicants who have applied for Supplemental Security Income (SSI) and are awaiting a determination.

This emergency action is required to comply with the requirements of the Act, which authorizes the Mayor to establish standards for processing applications for interim assistance. The SSI program is a Federal program, which is administered by the Social Security Administration. The SSI program provides that where a State grants interim assistance to applicants awaiting SSI benefits rulings who are later determined to be entitled retroactively to such benefits, the State may be reimbursed from the eventual Federal payment of SSI for the amounts of State paid interim assistance during the application period. (42 U.S.C. § 1383(b)). To accomplish this protection against what would otherwise constitute double payments, the State must enter an agreement with the Social Security Administration to make payments to the State or its political subdivision as reimbursement for the paid interim assistance. When an applicant is found eligible for SSI benefits, the initial retroactive check is sent to the State. When the Federal check is greater than the amount of the State interim assistance paid to the recipient, the State pays the balance of such payment in excess of the reimbursable amount to the recipient. The interim assistance program provides an eligible SSI recipient a means of support during the frequently extended Federal application review process, which sometimes can extend over several years.

Action was previously taken to adopt the emergency rules at a time when DHS had rulemaking authority pursuant to the "Interim Disability Assistance Temporary Amendment Act of 2002" ("2002 Act"), effective May 21, 2002 (D.C. Law 14-141; D.C. Official Code § 4-204.07). However, the agency's rulemaking authority for the 2002 Act expired on January 1, 2003. Consequently, the rules could not be published until the 2003 Act became effective on January 22, 2003.

This emergency rule was adopted on March 16, 2003, and became effective immediately upon that date. The emergency rule will expire 120 days after the effective date, or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Director also gives notice of her intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Title 29 DCMR is amended by adding the following new Chapter 66.

CHAPTER 66 INTERIM DISABILITY ASSISTANCE

6600 PURPOSE

- 6600.1 The Interim Disability Assistance (IDA) Program shall provide temporary financial assistance to disabled adults who are ineligible for Temporary Assistance for Needy Families (TANF) and who have applied for and are waiting approval of Supplemental Security Income (SSI). Approval of IDA shall be contingent on the availability of funds.
- 6600.2 If funds are exhausted at the time the individual is determined to meet all of the eligibility requirements, he or she shall be placed on a waiting list and approved when funds become available.
- 6600.3 The application processes shall be administered in accordance with the rules applicable to the Medicaid Program.
- 6600.4 The monthly grant shall be the same as that for a family size of one (1) or two (2) under the TANF Program as set forth in section 552 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.52(c)), as amended.

6601 ELIGIBILITY REQUIREMENTS

- 6601.1 An individual shall be eligible for IDA if he or she is:
- (a) A United States citizen; or
 - (b) An alien who meets the alien eligibility requirements for SSI under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2260; 8 U.S.C. §§ 1601-1646);
 - (c) A resident of the District of Columbia, as determined under § 503 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.3);
 - (d) Financially in need, meets the following income and asset limits, and financial eligibility is verified:
 - (1) There is no gross income limit for the household. The household's net income is at least ten dollars (\$10) less than that the TANF payment level for a family of the same size;

- (2) No earned income or unearned income deductions are allowed, when calculating a household's countable income. Income is deducted dollar-for-dollar from the payment level to determine the household's financial eligibility and benefit amount;
 - (3) The income of a spouse who lives with the applicant and is not included in the IDA household is deemed using the following formula: total income of non-IDA spouse minus TANF payment level for one (1) person equals net income;
 - (4) The one (1) person household asset limit is two thousand dollars (\$2,000);
 - (5) The two (2) person household asset limit is three thousand dollars (\$3,000); and
 - (6) All liquid and non-liquid resources are countable for the purpose of determining IDA eligibility, except those excluded for SSI under Title 16, Section 1613 of the Social Security Act;
- (e) Ineligible for a category of cash assistance in which there is federal financial participation, except that an individual who has applied for Social Security Disability Insurance (SSDI) or SSI may be eligible during the period that the SSDI or SSI application is being processed; and
- (f) Determined by the Department of Human Services (Department) to meet the definition of disability.
- 6601.2 For the purposes of this section, except as indicated, income means both earned and unearned income as defined for the SSI program in Title 16, Section 1612 of the Social Security Act. In addition, regular and presumptive SSI payments shall be counted and in-kind maintenance and support benefits shall be excluded when determining IDA eligibility.
- 6601 .3 An individual may not receive assistance unless he or she does the following:
- (a) Applies to the Social Security Administration (SSA) for SSI benefits;
 - (b) Signs an Interim Assistance Reimbursement Authorization form;
 - (c) Provides a social security number or verification of application for a social security number; and

- (d) Cooperates with the Disability Entitlement Advocacy Program, which includes:
- (1) Providing materials needed to pursue the SSI application such as medical reports;
 - (2) Keeping appointments with medical providers;
 - (3) Keeping appointment with his or her disability advocate;
 - (4) Keeping appointments with SSA and its representatives; and
 - (5) Participating in treatment programs, as required.

6601.4 Failure to cooperate with the Disability Entitlement Advocacy Program or the case manager may result in termination of IDA benefits, unless a good cause reason can be established for non-cooperation.

6601.5 Good cause for non-cooperation with case management shall include circumstances that are beyond the recipient's control such as, but not limited to, the following:

- (a) Personal illness;
- (b) Illness of another household member that requires the presence or care of the recipient; and
- (c) A household emergency such as a death in the family.

6602 APPLICATION PROCESS

6602.1 A qualified individual's eligibility for IDA benefits shall begin on the first of the month following the month that he or she applied for IDA or the month following the month in which his or her application for SSI was filed with the Social Security Administration (SSA), whichever is later.

6602.2 Each individual shall have the right to file an application for IDA on the same day that he or she contacts the Income Maintenance Administration (IMA).

6602.3 Each application for IDA shall be submitted in person by the applicant or his or her authorized representative at an IMA designated service center, using the Combined Application that is used to apply for multiple programs. The application shall be considered filed when it is on the prescribed form, contains a name and an address, unless the person is homeless, has a signature and a face-to-face interview is completed.

- 6602.4 Any individual or spouse of a married couple may file an application for IDA. The applicant may designate an authorized representative to act on his or her behalf.
- 6602.5 A face-to-face interview with the applicant or his or her authorized representative is required for all applications for IDA. During the application interview, the IMA Social Service Representative (SSR) shall:
- (a) Inform the applicant of his or her rights and responsibilities;
 - (b) Explain the program and related services;
 - (c) Outline the conditions of eligibility and indicate what verification and information are necessary to determine eligibility;
 - (d) Advise the applicant of the opportunity to register to vote;
 - (e) Notify the applicant that the information he or she provides will be matched by the computer with information from other local, state and federal agencies;
 - (f) Complete the Authorization for Reimbursement of Interim Assistance Form;
 - (g) Complete SSA Form 1696-U4, Appointment of Representative, authorizing an IMA-designated organization to act as the applicant's representative to SSA;
 - (h) Issue medical report forms, as needed;
 - (i) Complete a social information form; and
 - (j) Explore and resolve any unclear or incomplete information.
- 6602.6 A final determination shall be made within sixty (60) days, counting from the day after the application was filed. If by the sixtieth (60th) day following the date of application, the applicant has not provided all verifications, the Department shall issue a denial notice and deny the application. An applicant shall be given an extension of up to fifteen (15) days to establish eligibility as stated in subsection 6603.2.
- 6602.7 If all financial and non-financial conditions of eligibility are met and funds are currently available, the Department shall approve the benefits.

6603 DENIAL OF APPLICATION

- 6603.1 The application for IDA shall be denied if:
- (a) The applicant refuses to cooperate with the Income Maintenance Administration (IMA) in providing the information needed to determine eligibility;
 - (b) The conditions of non-financial eligibility have not been met;
 - (c) The income and/or assets exceed established limits;
 - (d) The application has been voluntarily withdrawn or abandoned; or
 - (e) The funding for the program is exhausted.
- 6603.2 An applicant shall be given an extension of up to fifteen (15) days to establish IDA eligibility under the following circumstances:
- (a) A determination of disability is pending with the Medical Review Team (MRT); or
 - (b) The MRT has found that additional information is needed to determine disability and the information cannot be provided by the sixtieth (60th) day.
- 6603.3 The applicant shall be notified of the denial, the reason for the denial, and his or her right to a fair hearing.

6604 DURATION OF BENEFITS

- 6604.1 A qualified individual's eligibility for IDA benefits shall end either at the end of the month in which SSA makes a final decision on the application for SSI benefits, if the SSA's decision is a denial of the application; or at the end of the month in which SSA begins payment of benefits, if the decision is favorable.
- 6604.2 For purposes of this section, the final decision of the SSA shall be the decision by the Appeals Council of the Office of Hearings and Appeals, or the denial by the Disability Determination Division or Administrative Law Judge, if the IDA recipient fails, without good cause, to file a timely appeal of that decision.
- 6604.3 If the decision of the Administrative Law Judge is a denial and an appeal is filed timely, the Department shall immediately make a determination whether to refer the IDA recipient for appropriate vocational rehabilitation services.

6604.4 If an IDA recipient requests a fair hearing to contest the termination of his or her IDA benefits, any IDA benefits paid pending the outcome of the hearing shall terminate as of the last month of the period of eligibility, as defined in these rules, regardless of whether the fair hearing process is complete.

6605 PAYMENTS

6605.1 IDA benefits shall be issued through electronic benefit transfer (EBT) accounts.

6605.2 Rental vendor payments shall not be deducted from IDA benefits.

6606 DISABILITY REQUIREMENTS

6606.1 If an applicant for IDA has previously been determined by SAA not to satisfy the disability requirements for SSI, the Department shall evaluate disability in the same manner as under the Medicaid Program, as provided in 42 C.F.R. 435.541.

6606.2 An applicant shall be ineligible for IDA unless he or she:

- (a) Alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination;
- (b) Alleges more than twelve (12) months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Social Security Act, and has not applied to SSA for a determination with respect to these allegations; or
- (c) Alleges less than twelve (12) months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of SSA, and has applied to SSA for reconsideration or reopening of its disability decision.

6607 REPAYMENT OF BENEFITS

6607.1 For any month or period of months in which an IDA recipient receives both IDA and SSI, he or she shall repay to the District of Columbia:

- (a) The entire amount of the IDA payments received if the SSI benefits received for the same period equaled or exceeded the IDA payment; or
- (b) That portion of the IDA payments equal in amount to the SSI benefits received for the period if the SSI benefits received were less than the IDA payment.

- 6607.2 To make repayment, an IDA applicant shall sign an Interim Assistance Reimbursement Authorization form, which:
- (a) Permits SSA to send the individual's past due SSI benefit payment to the Department; and
 - (b) Permits the Department to deduct from these payments an amount equal to the IDA benefits provided.
- 6607.3 Upon receipt of an IDA recipient's past-due SSI benefit, DHS shall calculate the amount of the benefit due to DHS as repayment and the amount, if any, due to the IDA recipient.
- 6607.4 The Department shall provide the IDA recipient with a written explanation of the calculation set forth in subsection 6607.3 and shall pay any amount due to the IDA recipient, in accordance with section 1631 of the Social Security Act, approved October 30, 1972 (86 Stat. 1475; 42 U.S.C. § 1382 (g)) and the SSA Interim Assistance regulations, 20 C.F.R. 416.1901-1922.
- 6607.5 If an IDA recipient is determined by SSA to meet the disability requirements for purposes of SSI eligibility but withdraws the SSI application prior to payment of the past-due benefits, the IDA benefits received by that individual shall be considered an overpayment and that individual shall be liable to the District for repayment of all IDA benefits received.
- 6608 RECERTIFICATION FOR BENEFITS; REINSTATEMENT**
- 6608.1 An IDA recipient shall recertify for benefits within twelve (12) months of the month of the individual's approval and every twelve (12) months thereafter.
- 6608.2 The following eligibility requirements shall be redetermined and reverified at the IDA interview:
- (a) Residency;
 - (b) Income;
 - (c) Resources; and
 - (d) Status of the SSI claim.
- 6608.3 No IDA recipient shall be required to submit new medical information to continue IDA eligibility.

- 6608.4 If the IDA recipient provides all information needed to redetermine eligibility, confirming that he or she continues to meet all financial and non-financial requirements, the SSR shall recertify IDA benefits for an additional twelve (12) months.
- 6608.5 An IDA recipient shall report, within ten (10) days, any changes that affect his or her eligibility for benefits.
- (a) If any change results in an increase in the recipient's benefits, the SSR shall make the change for the following month; and
- (b) If any change results in a decrease in the recipient benefits, the SSR shall make the change for the month following the fifteen (15) days notice of the intended reduction in benefits, except that if the recipient reports the approval of SSI benefits, the recipient's benefits may be changed for the following month.
- 6608.6 An IDA recipient may be reinstated for benefits if he or she provides by the effective date of closing, all information needed to re-establish eligibility.
- 6608.7 An individual who does not provide all needed information by the effective date of closing shall re-apply for IDA.
- 6608.8 At re-application, the applicant shall verify all eligibility requirements and he or she shall provide current medical information if the Medical Review period has expired. Representation and reimbursement agreements shall also be resigned.
- 66008.9 If, at re-application, the applicant re-establishes eligibility but IDA funds are exhausted, the applicant shall be added to the waiting list, effective the date of re-application.

6609 HEARING RIGHTS

- 6609.1 Any applicant or recipient who is dissatisfied with an action taken by the Department, which affects his or her IDA benefits, participation or requirements, shall have the right to request a fair hearing.
- 6609.2 The hearing process shall be conducted in accordance with rules established in D.C. Official Code § 4-210.01 *et seq*; except that, if a recipient requests continuation of benefits while the fair hearing is pending, benefits may not be continued after a final determination of SSI eligibility has been made.

6699 DEFINITIONS

- 6699.1 The following terms and phrases shall have the meanings ascribed:

“Applicant” - a person who is applying for Interim Disability Assistance and applying for benefits. He or she may assert eligibility for himself or herself or as the authorized representative of an applicant.

“Assistance Unit” - all individuals whose needs, income and resources are considered in determining eligibility for, and the amount of, IDA assistance.

“Authorized Representative” - an adult who acts on behalf of another person in applying for, obtaining or using program benefits for Interim Disability Assistance

“Case Management Services” - services received by IDA households when assigned a disability advocate to assist them in the process of qualifying for SSI by acquiring and providing information to process the SSI claim, setting up necessary appointments, tracking the progress of the claim, and representing the household throughout the appeals process.

“Council” - the Council of the District of Columbia.

“Department” - the Department of Human Services of the District of Columbia, or any successor organizational Unit (in whole or in part).

“Disability” - this term as defined at 20 CFR 416.905 shall have the same meaning as that employed by the Social Security Administration, which is the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months. To meet this definition, an applicant shall have a severe impairment that makes him or her unable to continue in his or her previous line of work or to perform any other substantial gainful activity, which exists in the national economy. Residual functional capacity, age, education, and work experience are all considered in making disability determinations.

“Disability Entitlement Advocacy Program” - the Income Maintenance Administration program that provides IDA case management and legal advocacy services in the SSI application and appeal process.

“District” - the District of Columbia Government.

“Earned Income” - income in cash or in kind that is produced as a result of the performance of services currently rendered by an individual.

“Fair Market Value” - the value at which an asset could be sold in the open market in a transaction between unrelated parties.

“Gross Income” - the total earned income before any deductions required by law.

“Impairment” - a deficiency, which results from anatomical, physiological or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms and laboratory findings not only by a statement of symptoms.

“Income” - earned or unearned money received by an individual that is of gain and benefit to the individual or assistance unit; and includes the following: salary, gross income from self-employment, training allowances, stipends or other payments for work experience (to the extent that they are countable as income pursuant to D.C. Official Code § 4-205.13a), District public assistance payments, federal public assistance payments (to the extent permitted by law), pensions, retirement benefits, annuities, unemployment compensation, worker’s compensation, or alimony payments made directly to a member of the assistance unit, interest, dividends, scholarships, rent received from a tenant or lessee, and money that is required by the District or federal laws to be deemed from person who is not a member of the assistance unit. The term “income” does not include a non-recurring lump-sum payment (which shall be considered a resource); payments made by a government agency to a third party for child care, housing, or medical assistance; or any payment that is specifically excluded by federal or District law from consideration as income for the purpose of determining eligibility for public substantial assistance.

“Ineligible Spouse” - someone who lives with a person as a husband or wife and who is not eligible for SSI benefits.

“Interim Disability Assistance” – (IDA) a District of Columbia public assistance program for adults with disabilities who are waiting on a pending application for SSI benefits.

“Lump-sum Payment or Settlement” - a nonrecurring earned or unearned income including retroactive monthly payments and payments in the nature of a windfall.

“Mayor” - the Mayor of the District of Columbia or the agents, agencies, officers, and employees designated by him or her to perform any function vested in them by this chapter.

“Medical Review Team” - the administrative unit within the Income Maintenance Administration that adjudicated disability claims for federal medical assistance.

“Public Assistance” - payment in or by money, medical care, remedial care, goods or services to, or benefit of, needy persons.

“Recipient” - a person to whom or on whose behalf public assistance is granted.

“Representative Payee” - a person or organization selected by the Social Security Administration to receive benefits on behalf of a Old Age Survivors Disability insurance or Supplemental Security income recipient and obligated to use those benefits for the personal care and well-being

“Resident” - a person who is living in the District of Columbia voluntarily and not for a temporary purpose.

“Resources” - cash or other liquid assets or any real or personal property that a member of an assistance unit owns and could convert to cash to be used for support and maintenance.

“Residual Functional Capacity” - activities an applicant can perform despite any impairment and any related symptoms such as pain, physical or mental limitations.

“Social Security Administration” - the federal agency that administers Social Security Income (SSI) among other programs.

“Social Service Representative” - the IMA case manager who is responsible for processing the applicant’s Interim Disability Assistance application.

“Sponsor” - an individual who signs an affidavit of support agreeing to support a person as a condition of the person’s admission as an alien for permanent residency in the United States. “Sponsor” does not include an organization such as the congregation of a church or service club, or an employer who only guarantees employment for a lien upon entry but does not sign an affidavit of support.

“Substantial Gainful Activity” - work activity that, as defined in 20 CFR 416.972, is both substantial and gainful:

- (a) Substantial work activity is work activity that that involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if it represents a cutback, warrants less pay, or entails less responsibility than prior positions.
- (b) Gainful work activity is work activity that is done for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

- (c) Generally, other activities like taking care of one's self, household tasks, hobbies, therapy, school attendance, club activities, or social programs are not considered substantial gainful activity.

"Supplemental Security Income" - the federal program for the aged, blind and disabled.

"TANF" - the Temporary Assistance for Needy Families Program.

All persons desiring to comment on the proposed rules should do so in writing no later than thirty (30) days after the publication of this notice in the D.C. Register. Comments should be filed with Kate Jesberg, Administrator, Income Maintenance Administration, Department of Human Services, 645 H Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of these proposed rules may be obtained by writing to the above address.